

ENTERED

January 22, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JUAN BALDERAS,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

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CIVIL ACTION NO. 4:20-CV-4262

SCHEDULING ORDER

Juan Balderas, an inmate on Texas' death row, has filed a federal petition for a writ of habeas corpus. (Docket Entry No. 2). The parties have submitted a joint proposed scheduling order. (Docket Entry No. 5). The Court enters the following schedule pursuant to that agreement by the parties, with minor modification:

1. Balderas filed his initial Petition for Writ of Habeas Corpus on December 15, 2020.
2. Balderas shall file an Amended Petition for Writ of Habeas Corpus within 180 days of entry of this Scheduling Order, unless counsel is impeded by the ongoing COVID19 pandemic. In the event that counsel believes it has been impeded by the COVID19 pandemic and is unable to comply with the 180 day filing deadline, it will inform Respondent's counsel 30 days before the deadline, and the parties shall promptly confer regarding a proposed revised scheduling order. If the parties agree on a proposed revised schedule order, they shall submit a proposed revised scheduling order 15 days prior to the deadline. In the event the parties cannot agree, Petitioner may file an appropriate motion for an extension 15 days prior to the deadline.
3. The amendment discussed in this Paragraph 2 constitutes the one amendment, "as a matter of course," under Federal Rule of Civil Procedure 15(a). By agreeing to this amendment, Respondent does not waive any procedural arguments or defenses that may arise in connection with claims raised in the amendment, or the amendment itself.
4. Respondent will submit a copy of the state court record prior to, or at the time, Respondent's Answer is filed.

5. Respondent will file an Answer to the Amended Petition within 90 days of the filing of the Amended Petition.
6. Balderas will file a Reply to Respondent's Answer within 60 days of the filing of the Answer.
7. Balderas will file an initial discovery motion within 60 days of entry of this Scheduling Order. If the Court allows discovery, the above deadlines will be stayed until the completion of discovery. After the completion of discovery, the parties will file a joint letter indicating that discovery is complete and the above referenced dates will run from the date of the joint letter.
8. Balderas's Petition for Writ of Habeas Corpus contains claims that were not exhausted in state court. Balderas reserves the right to file a motion, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), to stay and abey these proceedings to exhaust any unexhausted claims in state court. Balderas will file any motion pursuant to *Rhines* at the same time as his Amended Petition, if not sooner.

The Clerk will provide copies of this Order to the parties.

SIGNED on January 21, 2021 at Houston, Texas.

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ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE